

1 Stephen D. Finestone (125675)
1 Jennifer C. Hayes (197252)
2 Ryan A. Witthans (301432)
2 FINESTONE HAYES LLP
3 456 Montgomery Street, 20th Floor
3 San Francisco, California 94104
4 Phone: (415) 421-2624
4 Fax: (415) 398-2820
5 sfinestone@fhlawllp.com

5
6 Attorneys for Interested Party
6 Bernadette Cattaneo

7

8

9 **UNITED STATES BANKRUPTCY COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**
11 **MODESTO DIVISION**

12 In re

13 ANDREAS ABRAMSON,

14 Debtor.

Case No. 18-90258
Chapter 7
DCN: MF-6

15 Hearing
Date: December 20, 2018
16 Time: 10:30 a.m.
Dept: E
17 Place: 1200 I Street, Suite 4
Modesto, California 95354
18
19 Judge: Hon. Ronald H. Sargis

20
21 **SUPPLEMENTAL BRIEF REGARDING SECTION 522 LIEN STRIPPING¹**

22 Andreas Abramson (the “Debtor”) filed a motion to avoid the judicial lien of Helen
23 McAbee (the “McAbee Lien,” asserted by creditor “McAbee”) against property commonly
24 known as 83 Sanguinetti Court in Copperopolis, California (the “Property”). Dckt. 141. The

25
26
27 ¹ Unless specified otherwise, all chapter and code references are to the Bankruptcy Code,
28 11 U.S.C. §§ 101–1532. All “Civil Rule” references are to the Federal Rules of Civil Procedure
and all “Bankruptcy Rule” references are to the Federal Rules of Bankruptcy Procedure. Bare
“ECF” references are to the docket in this proceeding.

1 Court issued an order allowing Bernadette Cattaneo (“Cattaneo”), the Debtor’s ex-wife, to
2 intervene in the contested matter as a co-obligor to McAbee. Dckt. 225.

3 On October 25, 2018, the Court issued an order requiring supplemental briefing regarding
4 the application of the lien-stripping provisions found in § 522. Dckt. 224. The Debtor filed his
5 supplemental brief on November 16, 2018. Dckt. 229. Cattaneo respectfully submits her
6 supplemental brief as directed by the Court.

7 **I. BACKGROUND**

8 The Debtor asserts that the fair market value of the Property is \$1,160,027; McAbee and
9 Cattaneo assert the higher value of \$1,725,000. The Property is subject to three encumbrances. In
10 order of seniority pursuant to California state law, they are: (1) a first deed of trust for \$925,557;
11 (2) McAbee’s lien for \$770,000; and (3) an alleged second deed of trust in favor of the Debtor’s
12 father for \$265,000 that was placed on the Property approximately three years after the McAbee
13 Lien. The Debtor’s claimed homestead exemption is \$75,000.

14 If granted, the Debtor’s motion to avoid the McAbee Lien pursuant to § 522 would
15 eliminate the second-priority lien while leaving the junior lien intact. This would appear to
16 provide the junior lienholder a windfall. As noted by the Court, this raises questions about (1) the
17 intent of Congress in drafting § 522; (2) whether Congress drafted a statute that creates an
18 incentive for insiders to manufacture impairment by collusively creating junior liens; and (3)
19 what the proper application of § 522 is in this context. To begin answering these questions, it is
20 useful to examine the various ways in which courts have applied § 522.

21 **II. VARIED INTERPRETATIONS OF SECTION 522**

22 Section 522 proscribes the ability of a debtor to avoid liens against exempt property,
23 allowing a debtor to wipe out judicial liens on certain property to the extent that those liens
24 impair a debtor’s exemption in that property. § 522(f)(1). The plain language of § 522(f)(2)
25 states that “a lien shall be considered to impair an exemption to the extent that the sum of—(i)
26 the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor
27 could claim if there were no liens on the property; exceeds the value that the debtor’s interest in
28 the property would have in the absence of any liens.”

1 Application of § 522 to avoid a lien that is senior to a lower-priority consensual lien, a
2 so-called “sandwich lien” scenario, creates uncertainty. Some courts have disregarded state-law
3 lien priority in this situation, allowing debtors to avoid judicial liens that are senior to other
4 consensual liens. However, this outcome is not uniform.

5 A. Cases Allowing Lien Avoidance in a “Sandwich Lien” Scenario

6 The case of *Moldo v. Charnock (In re Charnock)* addressed a similar situation.² 318 B.R.
7 720 (B.A.P. 9th Cir. 2004). In that case, the debtor’s residence was worth \$435,000. The
8 residence was subject to a judicial lien in the amount of \$68,293 in first position and a junior
9 deed of trust in the amount of \$371,055.97, which was the source of Debtor’s purchase of the
10 property. The debtor’s homestead exemption was \$75,000. The exemption and liens totaled
11 \$514,348.97, exceeding the value of the residence. *Id* at 722. The court allowed the debtor to
12 avoid the senior judicial lien. In addressing the “windfall” scenario for the junior lienholder, the
13 court concluded that since the exemption was greater than the amount of the avoided lien, the
14 debtor was the beneficiary of the preserved avoided judgment lien, the junior lienholder did not
15 receive any windfall and was still subject to the same judgment lien. *Id.* at 726. *See also In re*
16 *Simonsen*, 758 F.2d 103 at 112 (3rd Cir. 1985).

17 Under the circumstances in *Charnock*, the homestead exemption and deed of trust
18 completely consumed the equity in the property, leaving nothing remaining to which the judicial
19 lien could attach. This situation contrasts with the instant case, in which the McAbee Lien is
20 significantly larger than the exemption. What happens if the McAbee lien is avoided in full?
21 Pursuant to the *Simonson* dissent and the legislative history, the junior deed should not “benefit”
22 by improving his position. If the entire judgment lien is avoided up to the amount of whatever
23 the Property value is determined by the Court, and the lien is preserved for the debtor, then he
24 receives a windfall far greater than his exemption.³

25
26

² *See also In re Smith*, 2006 Bankr. LEXIS 877, 2006 WL 1467108 (Bankr. M.D. Ga.
27 May 16, 2006); *Cadle Co. v. Taras (In re Taras)*, 131 Fed. Appx. 167 (11th Cir. 2005); *In re*
28 *Brinley*, 403 F.3d 415 (6th Cir. 2005); and *In re Kolich*, 328 F.3d 406 (8th Cir. 2003).

29 ³ Assuming for sake of argument the Debtor’s Property valuation of \$1,160,027, the
30 Debtor’s father’s lien is completely unsecured without avoidance of the McAbee Lien. Full
CATTANEO’S SUPPLEMENTAL BRIEF RE § 522(f)(2) AND (i)

1 Though it allowed Debtor to avoid the judicial lien, the court in *Charnock* echoed the
2 concerns expressed in *Kolich* regarding the potential application of § 522. The court stated that it
3 was:

4 . . . not entirely comfortable with the equities of literally applying
5 the statutory formula in this situation. It may give a debtor
6 contemplating bankruptcy the ability to wipe out judicial liens by
7 persuading a lender to take an otherwise junior consensual lien that
8 renders the exempt property over-encumbered and therefore ripe
9 for impairment. One would expect lenders to refuse to make such
10 high-risk loans, but there may be times when self-interest or hard-
11 to-detect collusion will lead to an abuse of § 522(f). On the other
12 hand, refusing to apply the statutory formula as written may result
13 in denying deserving debtors the fresh-start advantage § 522(f) was
14 enacted to provide—for example, if a drop in market value has left
15 exempt property over-encumbered by a judicial lien and a junior
16 consensual lien, and the judicial lienholder insists upon
17 foreclosure. With the competing equities both hard to weigh and
18 finely balanced, our task is simply to apply § 522(f)(2)(A) as
19 Congress wrote it.

20 *Charnock*, 318 B.R. at 729 (quoting *Kolich*, 328 F.3d at 410). In Debtor's case, the competing
21 equities are not so finely balanced. This is not a case where a drop in market value has left
22 property over-encumbered and the judicial lienholder is insisting upon foreclosure. Rather, the
23 instant case presents the situation where self-interest and possible collusion between the Debtor
24 and his father have led to the assertion of a junior consensual lien that appears manufactured to
25 avoid the McAbee Lien.⁴

26 B. Cases Disallowing Lien Avoidance in a “Sandwich Lien” Scenario

27 Several courts have declined to avoid judicial liens in sandwich lien scenarios. In *In re*
28 *Radcliffe*, 278 B.R. 426 (W.D. Ky. 2006), the debtor's property was worth \$250,000. In order of
29 priority, there were liens against the property of (1) \$15,000 for ad valorem real estate taxes; (2)
30 a first mortgage for \$180,000; (3) a judgment lien for \$112,418.35; and (4) a state tax lien for
31 \$56,548.93. The debtor's homestead exemption was \$6,000. *Id* at 427.

32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
5510
5511
5512
5513
5514
5515
5516
5517
5518
5519
5520
5521
5522
5523
5524
5525
5526
5527
5528
5529
5530
5531
5532
5533
5534
5535
5536
5537
5538
5539
55310
55311
55312
55313
55314
55315
55316
55317
55318
55319
55320
55321
55322
55323
55324
55325
55326
55327
55328
55329
55330
55331
55332
55333
55334
55335
55336
55337
55338
55339
55340
55341
55342
55343
55344
55345
55346
55347
55348
55349
55350
55351
55352
55353
55354
55355
55356
55357
55358
55359
55360
55361
55362
55363
55364
55365
55366
55367
55368
55369
55370
55371
55372
55373
55374
55375
55376
55377
55378
55379
55380
55381
55382
55383
55384
55385
55386
55387
55388
55389
55390
55391
55392
55393
55394
55395
55396
55397
55398
55399
553100
553101
553102
553103
553104
553105
553106
553107
553108
553109
553110
553111
553112
553113
553114
553115
553116
553117
553118
553119
553120
553121
553122
553123
553124
553125
553126
553127
553128
553129
553130
553131
553132
553133
553134
553135
553136
553137
553138
553139
553140
553141
553142
553143
553144
553145
553146
553147
553148
553149
553150
553151
553152
553153
553154
553155
553156
553157
553158
553159
553160
553161
553162
553163
553164
553165
553166
553167
553168
553169
553170
553171
553172
553173
553174
553175
553176
553177
553178
553179
553180
553181
553182
553183
553184
553185
553186
553187
553188
553189
553190
553191
553192
553193
553194
553195
553196
553197
553198
553199
553200
553201
553202
553203
553204
553205
553206
553207
553208
553209
553210
553211
553212
553213
553214
553215
553216
553217
553218
553219
553220
553221
553222
553223
553224
553225
553226
553227
553228
553229
553230
553231
553232
553233
553234
553235
553236
553237
553238
553239
553240
553241
553242
553243
553244
553245
553246
553247
553248
553249
553250
553251
553252
553253
553254
553255
553256
553257
553258
553259
553260
553261
553262
553263
553264
553265
553266
553267
553268
553269
553270
553271
553272
553273
553274
553275
553276
553277
553278
553279
553280
553281
553282
553283
553284
553285
553286
553287
553288
553289
553290
553291
553292
553293
553294
553295
553296
553297
553298
553299
553300
553301
553302
553303
553304
553305
553306
553307
553308
553309
553310
553311
553312
553313
553314
553315
553316
553317
553318
553319
553320
553321
553322
553323
553324
553325
553326
553327
553328
553329
553330
553331
553332
553333
553334
553335
553336
553337
553338
553339
553340
553341
553342
553343
553344
553345
553346
553347
553348
553349
553350
553351
553352
553353
553354
553355
553356
553357
553358
553359
553360
553361
553362
553363
553364
553365
553366
553367
553368
553369
553370
553371
553372
553373
553374
553375
553376
553377
553378
553379
553380
553381
553382
553383
553384
553385
553386
553387
553388
553389
553390
553391
553392
553393
553394
553395
553396
553397
553398
553399
553400
553401
553402
553403
553404
553405
553406
553407
553408
553409
553410
553411
553412
553413
553414
553415
553416
553417
553418
553419
553420
553421
553422
553423
553424
553425
553426
553427
553428
553429
553430
553431
553432
553433
553434
553435
553436
553437
553438
553439
553440
553441
553442
553443
553444
553445
553446
553447
553448
553449
553450
553451
553452
553453
553454
553455
553456
553457
553458
553459
553460
553461
553462
553463
553464
553465
553466
553467
553468
553469
553470
553471
553472
553473
553474
553475
553476
553477
553478
553479
553480
553481
553482
553483
553484
553485
553486
553487
553488
553489
553490
553491
553492
553493
553494
553495
553496
553497
553498
553499
553500
553501
553502
553503
553504
553505
553506
553507
553508
553509
553510
553511
553512
553513
553514
553515
553516
553517
553518
553519
553520
553521
553522
553523
553524
553525
553526
553527
553528
553529
553530
553531
553532
553533
553534
553535
553536
553537
553538
553539
553540
553541
553542
553543
553544
553545
553546
553547
553548
553549
553550
553551
553552
553553
553554
553555
553556
553557
553558
553559
553560
553561
553562
553563
553564
553565
553566
553567
553568
553569
553570
553571
553572
553573
553574
553575
553576
553577
553578
553579
553580
553581
553582
553583
553584
553585
553586
553587
553588
553589
553590
553591
553592
553593
553594
553595
553596
553597
553598
553599
553600
553601
553602
553603
553604
553605
553606
553607
553608
553609
553610
553611
553612
553613
553614
553615
553616
553617
553618
553619
553620
553621
553622
553623
553624
553625
553626
553627
553628
553629
553630
553631
553632
553633
553634
553635
553636
553637
553638
553639
553640
553641
553642
553643
553644
553645
553646
553647
553648
553649
553650
553651
553652
553653
553654
553655
553656
553657
553658
553659
553660
553661
553662
553663
553664
553665
553666
553667
553668
553669
553670
553671
553672
553673
553674
553675
553676
553677
553678
553679
553680
553681
553682
553683
553684
553685
553686
553687
553688
553689
553690
553691
553692
553693
553694
553695
553696
553697
553698
553699
553700
553701
553702
553703
553704
553705
553706
553707
553708
553709
553710
553711
553712
553713
553714
553715
553716
553717
553718
553719
553720
553721
553722
553723
553724
553725
553726
553727
553728
553729
553730
553731
553732
553733
553734
553735
553736
553737
553738
553739
5537340
5537341
5537342
5537343
5537344
5537345
5537346
5537347
5537348
5537349
5537350
5537351
5537352
5537353
5537354
5537355
5537356
5537357
5537358
5537359
5537360
5537361
5537362
5537363
5537364
5537365
5537366
5537367
5537368
5537369
55373610
55373611
55373612
55373613
55373614
55373615
55373616
55373617
55373618
55373619
55373620
55373621
55373622
55373623
55373624
55373625
55373626
55373627
55373628
55373629
55373630
55373631
55373632
55373633
55373634
55373635
55373636
55373637
55373638
55373639
55373640
55373641
55373642
55373643
55373644
55373645
55373646
55373647
55373648
55373649
55373650
55373651
55373652
55373653
55373654
55373655
55373656
55373657
55373658
55373659
55373660
55373661
55373662
55373663
55373664
55373665
55373666
55373667
55373668
55373669
55373670
55373671
55373672
55373673
55373674
55373675
55373676
55373677
55373678
55373679
55373680
55373681
55373682
55373683
55373684
55373685
55373686
55373687
55373688
55373689
55373690
55373691
55373692
55373693
55373694
55373695
55373696
55373697
55373698
55373699
553736100
553736101
553736102
553736103
553736104
553736105
553736106
553736107
553736108
553736109
553736110
553736111
553736112
553736113
553736114
553736115
553736116
553736117
553736118
553736119
553736120
553736121
553736122
553736123
553736124
553736125
553736126
553736127
553736128
553736129
553736130
553736131
553736132
553736133
553736134
553736135
553736136
553736137
553736138
553736139
553736140
553736141
553736142
553736143
553736144
553736145
553736146
553736147
553736148
553736149
553736150
553736151
553736152
553736153
553736154
553736155
553736156
553736157
553736158
553736159
553736160
553736161
553

1 On a motion to avoid the judgment lien, the court found that Congress did not intend to
2 alter state law lien priorities with the language of § 552. This interpretation avoids any
3 constitutional issues regarding the elimination of existing property rights under the Fifth
4 Amendment's takings clause. *Id.* at 428. *See also In re Dolan*, 230 B.R. 642, 647 (Bankr. D.
5 Conn. 1999) (citing *U.S. v. Security Industrial Bank*, 459 U.S. 70, 78 (1982) (enunciating the
6 "cardinal principle that this Court will first ascertain whether a construction of the statute is
7 fairly possible by which the constitutional question may be avoided")). The *Radcliffe* court cited
8 *Dolan* for support:

9 Since state law priority determines the order in which judicial liens
10 be avoided, the court concludes, under the circumstances of this
case, that the formula be applied to exclude junior nonavoidable
11 liens in the computation of whether [a] judgment lien impairs [the
debtor's] exemption, thereby avoiding the constitutional issue.

12 *In re Radcliffe*, 278 B.R. at 428. The court concluded that the priority of liens was material to
13 considering a lien avoidance motion under § 522, and that junior unavoidable liens must be
14 excluded from calculation of whether a judicial lien impairs a debtor's exemption. *Id.* *See also,*
15 *In re Sweeting*, 151 B.R. 322, 324 (Bankr. W.D.N.Y. 1992); *In re Spearman*, 124 B.R. 620, 623
16 (E.D.N.Y. 1991). (decided before the amendments to Section 522)

17 **III. APPLICATION OF SECTION 522 TO THE FACTS OF THIS CASE**

18 **A. There Is No Binding Authority Requiring the Result Argued by the Debtor**

19 As a preliminary matter, there is no binding authority directing the Court's application of
20 § 522 to the facts of this case. As a Bankruptcy Appellate Panel decision, *Charnock* is not
21 controlling authority. *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 765
22 F.3d 1095, 1114 (9th Cir. 2014). Bankruptcy Appellate Panel decisions are only binding on the
23 parties to that case. Only Circuit Court decisions bind all lower courts in that circuit, and there is
24 no Ninth Circuit case addressing this issue. Accordingly, this Court is not bound by any existing
25 case law.

26 **B. Simonson Suggests the Congress Intended a Different Result**

27 The Court identified *In re Simonson* as the source of the legal theory incorporated by
28 Congress in the drafting of the 1994 amendments to § 522. That case states that:

1 [The debtors] should be permitted to apply to their exemption the
2 value of the avoided liens . . . leaving the [junior lienholder] in the
3 same priority position it occupied prior to the commencement of
4 the case. This result not only effectuates Congress' intent to
5 preserve the debtor's exemption and thereby provide them with a
6 "fresh start," but also prevents a junior encumbrancer from
7 receiving a windfall merely because the debtor chose to avoid the
8 superior judicial liens. *See* H.R. Rep. No. 595, 95th Cong., 1st
9 Sess. 376, reprinted in 1978 U.S. Code Cong. & Ad. News 5963,
10 6332 (noting that a primary purpose of § 551 as a whole is to
11 prevent junior creditors from benefitting at the expense of the
12 estate when senior liens are avoided).

13 *Id.* at 110 (citation to the dissent, which was the position explicitly adopted by Congress).

14 Under this guidance, it appears that Congress intended that debtors be able to preserve
15 their exemption from the value of an avoided lien, and that junior lienholders be left in the same
16 position they originally occupied—receiving neither windfall nor injury.

17 The proper calculation in this case, then, begins with a consideration of the value of the
18 Property. The parties have differing views of this value, so two competing calculations are
19 provided below. From this value is subtracted the first-priority deed of trust. Next in line is the
20 McAbee Lien, which impairs the Debtor's claim of exemption pursuant to a plain reading of
21 § 522(f)(2). Because the McAbee Lien impairs the Debtor's exemption, the Debtor is allowed to
22 apply his exemption to the value of the avoided lien. As such, the lien is avoided to the extent
23 that it impairs the Debtor's exemption—by \$75,000. At the end of the priority line is the junior
24 deed of trust, which is left in exactly the same position that it was in prior to the partial
25 avoidance of the McAbee Lien.

	Debtor's valuation	Creditor's valuation
Property	\$1,160,027	\$1,725,000
1st DOT	(\$925,557)	(\$925,557)
Subtotal	\$234,470	\$799,443
Exemption	(\$75,000)	(\$75,000)
Subtotal	\$159,470	\$724,443
Available for McAbee Lien	\$159,470	\$724,443
Amount of McAbee Lien avoided	\$610,530	\$45,557

1 Under this analysis, the Debtor's claim of exemption is applied to the judgment lien and
2 the position of the junior lienholder is unchanged. This result accomplishes exactly what is
3 described in the dissent in *Simonson* and is what Congress intended. There is no windfall to the
4 junior lienholder under this analysis, though the junior could benefit from an increase in value as
5 the McAbee lien would be reduced and fixed in an amount as of the date of the bankruptcy
6 filing.⁵ Meanwhile, the Debtor receives his "fresh start" by receiving or preserving his
7 exemption.

8 C. This Case Presents the Situation so Concerning to the Courts in *Charnock* and *Kolich*

9 Even if the Court were inclined to apply the analysis espoused in *Charnock* and *Kolich*,
10 the specific facts of our case reveal the uncomfortable scenario cautioned by those decisions.
11 Both of those decisions involved junior liens held by institutional lenders, and not by relatives or
12 insiders. Both decisions also involved junior consensual lienholders that were unaware of a
13 senior judgment lien at the time of their transaction with the debtor. The courts cautioned that
14 their application of § 522 would "give a debtor contemplating bankruptcy the ability to wipe out
15 judicial liens by persuading a lender to take an otherwise junior consensual lien that renders the
16 exempt property over-encumbered and therefore ripe for impairment," and that this could lead to
17 abuses of § 522(f) resulting from "self-interest or hard-to-detect collusion." *Charnock*, 318 B.R.
18 at 729 (quoting *Kolich*, 328 F.3d at 410).

19 Cattaneo alleges that the Debtor and his father (the holder of the second deed of trust)
20 colluded to manufacture the junior second deed of trust with the purpose of defeating the senior
21 McAbee Lien. Even if not, the loan was an insider transaction made with full knowledge of the
22 judgment lien and should not be factored into the avoidance analysis.

23
24
25 ⁵ See 4 Collier on Bankruptcy at ¶ 522.11 (16th ed. 2018) ("Avoiding the judicial liens
26 should not have had the effect of moving the second mortgage lender up the priority ladder.
27 Rather, under section 522(i)(2), those judicial liens should have been preserved for the benefit of
28 the debtor's exemption as contemplated in that section. This would not have injured the second
mortgage holder in any way, and it also would have provided the treatment to judicial liens that
section 522(f)(1) anticipates.").

1 **IV. CONCLUSION**2 For the reasons stated above, Cattaneo suggests that the Court consider excluding the
3 junior consensual lien in the mathematical calculation for avoidance purposes.

4 DATED: December 7, 2018

5 FINESTONE HAYES LLP

6 */s/ Stephen D. Finestone*

78 Stephen D. Finestone
Attorney for Bernadette Cattaneo9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28